

DECISION



**THE COMPTROLLER GENERAL
OF THE UNITED STATES**
WASHINGTON, D.C. 20548

FILE: B-221817

DATE: April 16, 1986

MATTER OF: WHY R & D, Inc.

DIGEST:

1. Where request for proposals (RFP) lists cost last of three evaluation factors shown in descending order of importance and also states that cost is slightly less important than the other two factors, the most reasonable interpretation of the RFP is that cost is the least important evaluation factor. Contracting agency's evaluation of offers therefore was inconsistent with the evaluation scheme in the RFP, since agency made cost the most, not least, important of the three evaluation factors.
2. Protester was not prejudiced by contracting agency's deviation from the evaluation criteria in the request for proposals (RFP) where protester was not in line for award under either the evaluation scheme in the RFP or the evaluation scheme actually applied by the agency. Protester's bare statement that it would have lowered its price significantly is not sufficient, standing alone, to show that protester would have had a reasonable chance of receiving the award if it had known of the changed evaluation scheme.
3. Contracting agency's alleged disclosure of the unsuccessful offeror's price to the awardee would not have prejudiced the unsuccessful offeror.

WHY R & D, Inc. protests the award of a fixed-price contract to Mathematical Research, Inc. (MRI) by the Veterans Administration (VA) under request for proposals (RFP) No. 674-73-85. The contract is for keypunch and key verification services at the VA Data Processing Center,

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Austin, Texas. The protester contends that (1) VA's evaluation of offers was inconsistent with the evaluation criteria in the RFP; (2) VA improperly disclosed to MRI the price offered by the protester under a prior solicitation for similar services; and (3) VA amended the evaluation criteria in order to favor the awardee. We deny the protest.

The RFP was issued on October 15, 1985, with initial proposals due on November 14. Section M of the RFP provided that offers would be evaluated on the following three factors, with a maximum total score of 100 points: (1) experience and qualifications of personnel (25 points); (2) corporate capability and experience (30 points); (3) cost (45 points). On November 8, VA issued amendment No. 1 to the RFP, which in part extended the proposal due date to November 21 and revised the evaluation scheme to provide as follows:

"Proposals submitted in response to this RFP will be evaluated in accordance with the following factors in descending order of importance.

A. TECHNICAL APPROACH.

B. ORGANIZATION, PERSONNEL, FACILITIES.

C. COST. The importance of cost is slightly less than the above two factors. In the event of approximately equal technical proposals, cost will become of paramount importance."

According to the contracting officer, the evaluation scheme was revised in order to shift emphasis from an offeror's corporate experience to the collective experience of the offeror's personnel. The evaluation scheme as amended did not indicate the maximum number of points to be awarded. The agency report states, however, that the contracting officer assigned a maximum total score of 185 points, 100 points for the first two evaluation factors combined (technical approach and organization, personnel and facilities) and 85 points for the third factor (cost). The full 85 points for cost were to be assigned to the offeror with the lowest price; the other offerors would receive a portion of 85 points representing the ratio of their prices to the lowest price.

Initial proposals were received from four firms, all of which then were asked to submit best and final offers. One offeror (Statco) later was found unacceptable and dropped from the competitive range. The other three offerors were scored as follows:

	<u>Technical</u> (100 pts.)	<u>Cost</u> (85 pts.)	<u>Total</u>
MRI	99.1	85	184.1
WHY R&D	94.2	79	173.2
Impact	97.3	71	168.3.

MRI received the full 85 points for cost because it submitted the lowest price (\$202,991.28). The protester submitted the next low price (\$218,764.50).

Award to MRI was made on January 6, 1986 and WHY R&D filed its protest on January 16. Our Office notified VA of the protest on January 16, within the 10-day period after award during which notification of the filing of a protest triggers suspension of performance under the challenged contract in accordance with the Competition in Contracting Act of 1984 (CICA), 31 U.S.C.A. § 3553(d)(1) (West Supp. 1985). By letter dated January 29, however, VA advised us of its decision to proceed with performance as authorized by 31 U.S.C.A. § 3553(d)(2)(A)(i), based on its finding that performance of the contract is in the best interests of the United States.

The protester argues that assigning 85 of a total of 185 points to cost was inconsistent with the evaluation scheme in the amended RFP. Specifically, the protester asserts that it was improper for VA to make cost the most important of the three evaluation factors, since the RFP indicated that cost was the least important factor. The agency disagrees, arguing that, by stating that cost was "slightly less important than the above two factors," the RFP meant that cost was less important than the first two factors combined. Under this interpretation, VA contends, it was proper to assign 85 points to cost, which is slightly less than the total of 100 points assigned to the other two factors.

We agree with the protester that VA improperly deviated from the evaluation scheme set out in the amended RFP. In our view, the most reasonable interpretation of the RFP is that cost was the least important of the three evaluation factors listed. The RFP clearly stated that the three factors were listed in descending order of importance, with cost the last factor listed. The relative weight of cost

among the three evaluation factors was further confirmed by the statement in the RFP that cost was "slightly less important than the above two factors." While VA states that it intended this sentence to mean that cost was slightly less important than the other two factors combined, VA's interpretation is not the most reasonable in light of the language and structure of the RFP's evaluation provision. Each of the three factors is listed separately; there is no indication that the first two factors were to be grouped together for evaluation purposes, as VA argues.

Accordingly, the evaluation based on cost as the most important factor was improper. Nonetheless, we find that the protester has not shown that it was prejudiced by this deficiency. The protester received lower scores than the awardee for both the technical features of its proposal and its proposed price; thus, the protester would not have been in line for award under either the evaluation scheme in the RFP or the evaluation scheme actually applied by VA.

The protester argues that, if it had known that price was the most important evaluation criterion, "it very well may have reduced its price significantly," and, as a result, received a higher total score than the awardee. The protester's bare statement that it may have offered a lower price is not sufficient, however, to show that the protester would have had a reasonable chance of receiving the award had it been aware of the evaluation scheme actually used by VA. The protester does not discuss, for example, how it would have lowered its price enough to become the lowest-priced offeror without modifying its technical approach and risking a corresponding reduction of its technical score. Accordingly, we find that the protester has not shown it was prejudiced by VA's use of an evaluation scheme different from the scheme set out in the RFP. See Digital Radio Corp., B-216441, May 10, 1985, 85-1 CPD ¶ 526.

The protester also argues that VA amended the evaluation criteria in the RFP in order to favor MRI and that VA improperly disclosed to MRI the price offered by the protester under a prior solicitation for similar services. We find these allegations to be without merit. With regard to the amendment of the RFP, the protester presents no evidence that the amendment was intended to favor any offeror, and does not even discuss how the revised evaluation scheme favors MRI. In fact, we find more persuasive VA's position that the amended evaluation criteria actually would favor newer firms like the protester rather than more established firms like MRI, since the amended RFP was intended to deemphasize the importance of an offeror's corporate experience.

The protester's final allegation is that, after award was made to MRI under a prior solicitation for similar services (RFP No. 674-42-85), VA improperly disclosed the protester's price in that procurement to MRI. The protester argues that after the alleged disclosure MRI offered a lower average price under the current RFP than MRI did under the prior solicitation. The record is unclear as to whether the protester's price actually was disclosed.^{1/}

Even assuming the price was disclosed, however, we see no basis on which to find the postaward disclosure was improper in this case. The protester's reliance on the Federal Acquisition Regulation (FAR), 48 C.F.R. § 15.610(d)(3)(iii) (1984), is misplaced, since that provision prohibits disclosure of offerors' prices only before award is made; it does not apply where disclosure is made after award. The protester's reliance on FAR, 48 C.F.R. § 15.1001(c), is similarly misplaced. That provision authorizes postaward disclosure of the awardee's price, but does not address disclosure of unsuccessful offerors' prices, and we do not interpret the regulation's silence as a general prohibition on such disclosure after award is made. Also, we note that the protester does not assert that its proposal was proprietary.

In any event, the protester has not shown that it was prejudiced by the alleged disclosure. The record shows only that MRI offered a lower average price under the current RFP than it did under the prior RFP, while the protester offered a higher average price under the current RFP than under the prior RFP. MRI's current price is higher than the protester's prior price which allegedly was disclosed to MRI,

^{1/} VA submitted a copy of a letter from MRI requesting disclosure of the prices submitted by the offerors under the prior RFP. The letter is dated September 27, 1985, the day best and final offers were due under the RFP; award to MRI was made on September 30. The letter from MRI also has a handwritten notation, presumably by a VA official, stating "sent attached info 10/1/85." The agency report does not concede that disclosure was made, however; VA states only that the contracting officer either disclosed the price or intended to do so. In addition, MRI has submitted an affidavit by its president stating that MRI had no knowledge of the protester's price.

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so that MRI's lower current price does not on its face show an attempt by MRI to undercut the protester's prior price.

The protest is denied.

for Seymour E. For
Harry R. Van Cleve
General Counsel